

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MARCUS RASEAN THOMPSON,

Index No. 07CV3243 (WHP)

Plaintiff,

**ANSWER TO AMENDED
COMPLAINT**

-against-

Jury Trial Demanded

CAPTAIN ARTRAILYES CARTER et al.

Defendants.

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Defendant Deishay Smallwood, by his attorneys, Koehler and Isaacs LLP, respectfully alleges the following:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph I of the complaint, except admits that Correction Officer Smallwood, shield No. 14628, is employed by the City as a correction officer for the DOC and that plaintiff purports to name the parties to this action as stated therein.

2. Denies the allegations set forth in paragraph II of the complaint, except admits that plaintiff was in the custody of the New York City Department of Corrections (DOC) and incarcerated at Otis Bantum Correctional Center (OBCC) in the Central Punitive Segregation Unit.

3. Denies the allegations set forth in paragraph III of the complaint.

4. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph IV of the complaint.

5. Denies the allegations set forth in paragraph V of the complaint, except admits that plaintiff purports to base venue as stated therein.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph VI of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

7. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

8. Defendant has not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

9. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or culpable or negligent conduct of non-parties or third parties, and was not the proximate result of any act of the defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

10. Plaintiff's claims may be barred in whole or in part by the terms of the Prisoner Litigation Reform Act.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

11. To the extent that plaintiff asserts state law claims, he has failed to comply with New York General Municipal Law §50-e.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

12. At all relevant times, defendant was justified in his actions involving plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

13. Defendant has not violated any clearly established constitutional or statutory right of which a reasonable person should have known and, therefore, is protected by qualified immunity.

WHEREFORE, defendant requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just.

Dated: New York, New York
July 3, 2008

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By: _____/s/_____
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ANSWER OF DEISHAY SMALLWOOD

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